

Redefining Psychological Incapacity: A Review of Landmark Cases

Nicco B. Acaylar¹ and Jubelle Angeli C. Maturan²

Introduction

Aside from the Vatican City, the Philippines is the only state left which does not allow divorce or does not have divorce laws.³ Our laws on marriage have always been rigid and strictly interpreted. Heavily influenced by the Roman Catholic Church which always advocates for the sanctity of marriage and has always fought hard against its severance, our culture and eventually, our marriage laws do not recognize divorce.⁴ No less than our own Constitution advocates for marriage as an inviolable social institution that must be protected by the State.⁵ However, the Family Code did provide grounds wherein a marriage can be declared as void *ab initio*, which leads us to petitions for the declaration of nullity of marriages.

Since the Family Code of the Philippines was signed into law in 1987, the existence of psychological incapacity has been used by Philippine courts as one of the grounds for the declaration of nullity of marriages.⁶ Specifically, Article 36 of the Family Code provides that “A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall

¹ Nicco B. Acaylar is a fourth-year student at the Rizal Memorial Colleges – School of Law. He is currently the Chairperson of the RMC Law Journal team and the Managing Editor for *Jurisprudencia*, Volume 1, the official law journal of the Rizal Memorial Colleges – School of Law.

² Jubelle Angeli C. Maturan is currently a third-year student at the Rizal Memorial Colleges – School of Law. She graduated with a degree of Bachelor of Arts in Political Science, Minor in Philosophy from Ateneo de Davao University. She is presently employed at the Sangguniang Panlungsod ng Davao, as a Legislative Service Assistant of Coun. Bai Hundra Cassandra Dominique N. Advincula. She is also one of the Publishing Editors for *Jurisprudencia*, Volume 1, the official law journal of the Rizal Memorial Colleges – School of Law.

³ Philippine Commission on Women. Adopting Divorce in the Family Code, available at <https://pcw.gov.ph/adopting-divorce-in-the-family-code-2/>, accessed on January 6, 2022.

⁴ Tom Hundley & Ana P. Santos, The Last Country in the World Where Divorce Is Illegal, available at <https://foreignpolicy.com/2015/01/19/the-last-country-in-the-world-where-divorce-is-illegal-philippines-catholic-church/>, accessed on January 7, 2022.

⁵ CONST. (1987), art. XV, § 2 (Phil.).

⁶ Maria Katrina C. Franco, The Psychological Incapacity to Marry: Key Jurisprudence and Survey of Cases from 1995 to 2019, 46 *IBP JOURNAL* 40, 40 (2021).

likewise be void even if such incapacity becomes manifest only after its solemnization.”⁷ The Supreme Court is replete with jurisprudence pertinent to determining psychological incapacity as a ground for annulment, two of which shall be extensively discussed at the latter portion of this case analysis, alongside the subject jurisprudence.

The Supreme Court’s decision in *Leouel Santos v. Court of Appeals* and *Julia Rosario Bedia-Santos*⁸ (*Santos v. CA, for brevity*) was the first case that discussed psychological incapacity. Through then Associate Justice Jose Vitug, the Court explained that the Family Code of the Philippines⁹ did not give a definite meaning for psychological incapacity. Mainly based on the Canon Laws of the Roman Catholic Church, the deliberations of the Family Code Revision Committee decided to interpret such term on a case-to-case basis. However, the said committee also agreed that in ruling for psychological incapacity, the elements of gravity, juridical antecedence, and incurability must be attendant in the circumstances surrounding the case.¹⁰ Also, the plaintiff has the burden to prove that the incapacity must be incurable and grave enough for the other party not to fulfill his or her marital duties.

Meanwhile, in *Republic of the Philippines v. Court of Appeals* and *Roridel Olaviano Molina*¹¹ (*Republic v. CA and Molina, for brevity*), the Supreme Court established a strict set of rules to determine psychological incapacity. As penned by then Associate Justice Artemio Panganiban, psychological incapacity is identified as something that is clinically or medically permanent, must be alleged in the complaint, and must be clearly explained in the decision. Also, it is incumbent upon the plaintiff not only to prove the nullity of the marriage, but also the fact that the incapacity is grave enough to rule that the other spouse cannot assume his/her marital duties and that the incapacity is already existing at the time the marriage is celebrated. In this case, expert evidence is imperative to determine psychological incapacity.

However, in the recent years, the Supreme Court had the occasion to deviate from the guidelines set in *Republic v. CA* and *Molina*. The judges

⁷ Family Code, EO 209, as amended (Phil.).

⁸ *Santos v. Court of Appeals*, G.R. No. 112019, 240 S.C.R.A. 20 (January 4, 1995) (Phil.).

⁹ *Supra*, note 7.

¹⁰ *Supra*, note 8.

¹¹ *Republic v. Court of Appeals and Molina*, G.R. No. 108763, 268 S.C.R.A. 198 (February 13, 1997) (Phil.).

ruled that such guidelines have become rigid, to the point that applying such guidelines in every case is tantamount to a rejected petition for declaration of nullity of marriage.¹² It also opined that the constant and baseless refusal to procreate via sexual congress of a spouse is a non-fulfillment of marital duties and has been considered as equivalent to psychological incapacity.¹³

Penned by former Chief Justice Lucas Bersamin, the decision of *Valerio E. Kalaw v. Ma. Elena Fernandez*¹⁴ (*Kalaw v. Fernandez*, for brevity), was promulgated on January 14, 2015. This case has modified the Molina ruling. Here, the Court made clear that the Molina guidelines were not totally abandoned because the expert opinions were just given much weight in deciding this case. The Court explicitly ruled that Fernandez, the wife, was indeed psychologically incapacitated. The magistrates also relaxed the previously set forth guidelines. The Court found out that the said guidelines were too rigid and were susceptible to instant trial court rejection. Article 36 of the Family Code should not be interpreted strictly and too literally because the drafters crafted the law to enable some resiliency in its application. The Court should make decisions involving psychological incapacity on a case-to-case basis.

It is likewise noteworthy to discuss the case of *Chi Ming Tsoi v. Court of Appeals* and *Gina Lao-Tsoi*¹⁵ (*Chi Ming Tsoi v. CA*, for brevity). Here, the magistrates ruled that procreating children is one of the essential marital obligations under the Family Code. It is based on the universal principle that having children through sexual cooperation is the basic end of marriage. The senseless and unjust refusal of the man to fulfil the above-cited marital obligation is equivalent to psychological incapacity.

This case also tackles homosexuality which can only be considered as a ground for annulment if there is concealment of this condition prior to the marriage.¹⁶ The reason is obvious. It constitutes fraud, which makes the marriage voidable. The Family Code of the Philippines is explicit that a marriage may be annulled if the consent of one of the parties was obtained by fraud¹⁷.

¹² Supra, note 6.

¹³ *Chi Ming Tsoi v. Court of Appeals* and *Gina Lao-Tsoi*, G.R. No. 119190, 266 S.C.R.A. 324 (January 16, 1997) (Phil.).

¹⁴ *Kalaw v. Fernandez*, G.R. No. 166357, 745 SCRA 512, (January 14, 2015) (Phil.).

¹⁵ Supra, note 13.

¹⁶ Ibid.

¹⁷ Family Code, Exec. Ord. 209, art. 45, as amended (Phil.).

Twenty-four years after the Santos ruling was promulgated, the Supreme Court, through Justice Marvic Mario Victor F. Leonen, seemed to have rebranded psychological incapacity in several aspects. In *Rosanna L. Tan-Andal v. Mario Victor M. Andal*¹⁸ (*Tan-Andal v. Andal*, for brevity), psychological incapacity does not need to be strictly medically or clinically permanent and incurable anymore. Expert testimonies by medical professionals are not imperative for the Court to rule for psychological incapacity. In a press briefer¹⁹ pertaining to this case, psychological incapacity refers to a personal condition that prevents a spouse to comply with fundamental marital obligations which may have existed at the time of the celebration of the marriage, but only manifested after the wedding ceremonies.

The uncoupling story of Rosanna and Mario Victor was not an ordinary annulment case. It paved the way for Supreme Court to decide on a turnaround. In psychological incapacity cases, who is really the expert witness – medical professionals or the people who witnessed the marital union and its uncoupling? Is it incurable in the medical sense, or in the legal sense? Which side is the better judge to rule psychological incapacity? Were our previous decided cases on psychological incapacity restrictive, rigid and intrusive on our rights to liberty, autonomy, and human dignity, in the words of Justice Leonen?²⁰

The Tan-Andal Case: Factual Antecedents

Mario Victor and Rosanna first met during church activities in 1975 and reconnected in 1995 through childhood friends. Mario Victor courted Rosanna. Rosanna eventually fell in love with Mario Victor. As a result, she agreed to be Mario Victor's girlfriend.

During this period, Rosanna would notice that Mario Victor would allegedly become extremely irritable and moody. Also, she observed that Mario Victor would have difficulty in managing his finances. The latter's siblings would warn Rosanna that their brother was financially incapable of supporting a family. However, Rosanna replied that that she accepted Mario Victor for who he was. In addition, Rosanna already got pregnant with Ma. Samantha in November 1995. Nevertheless, the marriage ensued.

Mario Victor and Rosanna got married on December 16, 1995 at a Catholic church in Makati City. Months after, Rosanna gave birth to Ma. Samantha, the only

¹⁸ *Tan-Andal v. Andal*, G.R. No. 196359, (May 11, 2021) (Phil.), <https://sc.judiciary.gov.ph/20821/>

¹⁹ Supreme Court of the Philippines. Press Briefer on *Tan-Andal v. Andal*, G.R. No. 196359 (May 12, 2021), <https://sc.judiciary.gov.ph/18420/>.

²⁰ *Supra*, note 18.

child of the parties. Mario Victor, Rosanna, and Ma. Samantha made a duplex in Parañaque City as their family home, with Rosanna's parents living in the other side of such duplex.

During the lifetime of the marriage, Mario Victor has shown episodes of emotional immaturity, irresponsibility, irritability, and psychological imbalance. Rosanna also found out that Mario Victor is a marijuana user, and eventually, an addict. Due to such addiction, Mario Victor was confined into a drug rehabilitation center twice. He even used the funds of their family business twice to support his addiction, which led to the bankruptcy of the business. He would also neglect Ma. Samantha when the latter got sick of dengue fever and would even expose his daughter to his drug use.

Due to these reasons, Rosanna decided to file a petition for annulment against Mario Victor, using psychological incapacity as a ground. She presented Dr. Valentina Del Fonso Garcia as expert witness. Dr. Garcia diagnosed Mario Victor as someone suffering from narcissistic antisocial personality disorder and substance abuse disorder with psychotic features.²¹ Per Dr. Garcia, Mario Victor's diagnosis, coupled by the testimonies of Rosanna, Ma. Samantha, and Jocelyn Genevieve (Mario Victor's sister), rendered Mario psychologically incapacitated to comply with his essential marital obligations to Rosanna. However, upon cross-examination, Dr. Garcia admitted that she did not interview Mario because the latter refused an interview despite several invitations.

In May 2007, the Regional Trial Court ruled that the marriage of Mario Victor and Rosanna is void, on the ground of Mario Victor's psychological incapacity. However, in August 2007, the Court of Appeals reversed the trial court's decision, saying that the marriage is valid and subsisting. It ruled that Dr. Garcia's psychiatric evaluation of Mario Victor is unscientific and unreliable because she diagnosed Mario without interviewing him.

Was there psychological incapacity?

The main issue in this case is whether the marriage between Mario and Rosanna is void due to psychological incapacity. Simply stated, yes. There is psychological incapacity in this case.

However, what makes this case novel is that the Supreme Court was confronted with a dilemma. Would they change the guidelines laid down by juridical antecedents such as those laid down in *Republic v. Court of Appeals and Molina*, which mainly discussed about psychological incapacity being medically or clinically identified and must be sufficiently proven by experts? Or that of *Santos v. Court of Appeals*, which ruled that psychological incapacity must have juridical antecedence and its root cause medically or clinically permanent?

²¹ Ibid.

How did the Supreme Court decide to rebrand psychological incapacity? In what way will such ground be interpreted?

The Supreme Court's Ruling in Tan-Andal v. Andal

In a decision penned by Justice Marvic Mario Victor Leonen, the Supreme Court ruled that the marriage between Rosanna and Mario Victor was void ab initio. The Court gave credence to the testimony of expert witness Dr. Valentina del Fonso Garcia, who testified that Mario Victor suffers from narcissistic antisocial personality disorder and substance abuse disorder with psychotic features.²² As a result of such psychological disorder, Mario Victor was said to be psychologically incapacitated to fulfill his essential marital obligations to Rosanna.

The Supreme Court has provided a set of guidelines in determining the existence of psychological incapacity. First, it is incumbent upon the plaintiff to prove that his or her spouse is psychologically incapacitated to fulfill one's marital obligations. Second, the incapacity must be existing at the time of the celebration of the marriage even if such incapacity becomes manifest only after its solemnization. Third, the plaintiff must prove that the incapacity is a serious illness, excluding episodes of mild characterological peculiarities, mood changes, and occasional emotional outbursts. Lastly, an expert testimony is not a requirement in proving psychological incapacity since such concept is neither a mental incapacity nor a personality disorder that must be proven through expert testimony.²³ The Court already recognized the testimonies of ordinary witnesses such as family members and friends who personally witnessed the personal circumstances of the spouses.

However, there was a caveat. This case overturned the long-standing guidelines of psychological incapacity in Philippine courts. The magistrates made emphasis that psychological incapacity is a legal concept, not a medical concept. It is more of a *personality structure* or dysfunctional acts which will undermine family ties. Consequently, the Court decided that testimonies of ordinary witnesses will already suffice, and expert witnesses are not mandatory.²⁴

Psychological Incapacity Before Tan-Andal v. Andal

Before *Tan-Andal v. Andal*, there were *Republic v. Court of Appeals and Molina*, and *Santos v. Court of Appeals*. And dozens of psychological incapacity cases. The Supreme Court has also written decisions which deviated from the famous Molina guidelines. For us to understand how *Tan-Andal v. Andal* caused a complete turnaround as to how the bench and the bar must now interpret psychological incapacity, one must revisit these two Supreme Court cases and on how they used to determine the presence of psychological incapacity to annul marriages.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

The Santos Case

The concept of psychological incapacity was first mentioned in the case of *Leouel Santos v. Court of Appeals* and *Julia Rosario Bedia-Santos*²⁵ (*Santos v. Court of Appeals*, for brevity). While it is true that the Supreme Court did not clearly define the guidelines of psychological incapacity, the ponente in this case also explained that psychological incapacity is a mental incapacity, which prevents a spouse from fulfilling his or her marital duties.

Santos v. Court of Appeals was about the uncoupling story of Leouel Santos, a military man, and Julia Rosario Bedia, a nurse. On September 20, 1986, Leouel and Julia Rosario got married and eventually lived with the parents of the wife. Leouel Santos, Jr., their son, was born on July 18, 1987. However, the couple fought a lot, mostly about the frequent interference of Julia Rosario's parents into their marital issues.

Despite Leouel's disapproval, Julia Rosario left for the United States of America in 1988 to work as a nurse. Seven months after Julia Rosario's departure, the couple was able to communicate with each other, and Julia Rosario promised to go back to the Philippines after her contract expiry. Such promise was left unfulfilled. Even if Leouel eventually went to America for a work-related travel, he failed to locate Julia Rosario.

Soon after, Leouel filed a petition for the nullity of their marriage, using psychological incapacity as a ground. Per Leouel, Julia Rosario is psychologically incapacitated when she failed to come home and when she did not communicate with Leouel, despite all of the latter's efforts. Julia Rosario refuted Leouel's claims.

The trial court ruled to dismiss the petition for lack of merit. Consequently, the Court of Appeals affirmed the decision of the lower court. In *Santos v. Court of Appeals*, the issue revolves around whether or not psychological incapacity is present in Leouel and Julia Rosario's case.

In this case, the Supreme Court ruled that the circumstances present do not warrant psychological incapacity. In ruling in the negative, the ponente, then Associate Justice Jose Vitug, first explained that the term or the concept of psychological incapacity does not have an express definition under the Family Code of the Philippines²⁶. However, based on the deliberations of the Family Code Revision Committee about the matter, it was found out that the Committee decided not to put an exact definition to such concept. This is because psychological capacity has infinite manifestations and this is to prevent the limited applicability of psychological incapacity, under the principle of *ejusdem generis*.²⁷

²⁵ Supra, note 8.

²⁶ Supra, note 7.

²⁷ Supra, note 8.

Psychological incapacity was said to be based on Canon 1095 of the New Code of Canon Law, which provides that those who are unable to assume the essential obligations of marriage are incapable of contracting marriage.²⁸ Although not having juridical effect, the Court did give credence to the said Canon Law provision.

In addition, then Court of Appeals Associate Justice Alicia V. Sempio-Diy, who is also a member of the Family Code Revision Committee, provided that psychological incapacity must be characterized by gravity, juridical antecedence, and incurability. Also, for psychological incapacity to manifest, the alleged incapacity must be mental (not physical) and must exist at the time of the celebration of the marriage. Also, it must be incurable and grave enough for a spouse being ruled as unable fulfill his or her marital duties.²⁹

The Molina Case

Unlike *Santos v. Court of Appeals*, the Supreme Court in *Republic v. Court of Appeals* and *Molina* gave a concrete and strict guideline on how to determine psychological incapacity.

The relevant facts of this case are traced back to April 14, 1985. Roridel Molina married Reynaldo Molina. The union of the two bore a son. A year after, as the couple started to taste the sweetness of marriage, Reynaldo started to show signs of immaturity as a husband.

He exhibited immaturity and preferred to spend more time with his friends, rather than his family. He also depended on his parents for financial support and was not transparent to his wife when it comes to the finances of the family. Aggrieved, Roridel filed a case to the Regional Trial Court (RTC) for the declaration of nullity of marriage based on psychological incapacity which was affirmed by the Court of Appeals (CA).

The crux of the matter revolved as to whether irreconcilable differences and conflicting personality constitute psychological incapacity.

The Supreme Court ruled in the negative. There was no sufficient evidence showing that the psychological defect of Reynaldo, would constitute incapacity. The reason was obvious. The incapacity depicted towards Reynaldo was a mere "difficulty" or just a neglect in the performance of his functions as the husband of Roridel.

If a husband or a wife shows "irreconcilable differences" and "conflicting

²⁸ Marriage in Canon Law, Delaware: Michael Glazier, Inc., 1986, 129-130.

²⁹ Supra, note 8.

personalities" with each other, the said traits do not constitute psychological incapacity. The magistrates reiterated that to constitute psychological incapacity, it is indispensable that they must be shown to be incapable of doing so, due to some psychological (not physical) illness. It is crystal clear that the gravity of the problem, juridical antecedence and incurability were not apparent on this case.

In toto, the oft-cited Molina Guidelines as laid down in *Republic v. CA and Molina*³⁰ are as follows:

- (1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity...
- (2) The root cause of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological — not physical. Although its manifestations and/or symptoms maybe physical. The evidence must convince the court that the parties, or one of them, was mentally or physically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof...
- (3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. The evidence must show that the illness was existing when the parties exchanged their "I do's." The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto...
- (4) Such incapacity must also be shown to be medically or clinically permanent or incurable. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex...
- (5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characterological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, nor a refusal, neglect or difficulty, much less ill will...
- (6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.
- (7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our court...

³⁰ Supra, note 11.

- (8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons or his agreement or opposition, as the case may be, to the petition..

It can be gleaned that the Molina case is silent on the quantum of proof required in nullity cases. While there is an opinion that a nullity case under Article 36 is like any civil case that requires preponderance of evidence,³¹ it is immediately apparent now that the magistrates want the plaintiff to prove his or her case using clear and convincing evidence. This is a quantum of proof that ranks higher than preponderant evidence but less than proof beyond reasonable doubt.³²

The Kalaw Case

In the case of *Valerio E. Kalaw vs. Ma. Elena Fernandez*³³ (*Kalaw v. Fernandez*, for brevity), the petitioner heavily relied on the testimonial evidence of his two expert witnesses. He presented their testimonies concluding that the respondent was psychologically incapacitated. The expert witnesses believed that the wife was psychologically incapacitated for the following reasons. First, she constantly engaged in mahjong sessions with her friends. Second, she was in an adulterous relationship. Third, she constantly visited beauty parlors and mingled with her friends leading to an obvious neglect of their children.

The petitioner's experts testified that the respondent's habits, being constantly performed, could detriment the quality and quantity of time devoted to her duties as wife and mother of their children. They opined that these were valid grounds for psychological incapacity.

With the above-cited grounds, was there psychological incapacity?

The Supreme Court ruled in the affirmative as it granted the motion for reconsideration filed by the petitioner. The Court heavily relied on the expertise of the witnesses in the field of psychology. Thus, an in- depth diagnosis by experts was indispensable to rule that the malady was grave, incurable and had an antecedent.³⁴

Conversely, if the totality of evidence presented is sufficient to rule psychological incapacity, then actual medical examination of the person concerned need not be resorted to.

³¹ Antonio v. Reyes, G.R. No. 155800, 484 S.C.R.A. 353 (March 10, 2006) (Phil.).

³² Spouses Manalo v. Hon. Roldan-Confesor, 290 Phil. 311, 323 (November 19, 1992) (Phil.), as cited in Tan-Andal v. Andal, G.R. No. 196359, (May 11, 2021) (Phil.), <https://sc.judiciary.gov.ph/20821/>

³³ Kalaw v. Fernandez, G.R. No. 166357, 745 SCRA 512, (January 14, 2015) (Phil.)

³⁴ Supra, note 14.

The Chi-Ming Tsoi Case

In *Chi Ming Tsoi v. Court of Appeals and Gina Lao-Tsoi*³⁵ (*Chi Ming Tsoi v. CA*, for brevity), the plaintiff and the defendant got married. Unfortunately, the couple didn't engage in sexual intercourse ever since. To know the root cause of the problem, they sought help from a medical practitioner. It was found out that the wife was healthy, normal, and still a virgin. The husband's examination result was kept private.

The plaintiff now asserted that the defendant was impotent and a closet homosexual. In addition, she claimed that the defendant married her just to maintain his residency status in the Philippines and to publicly maintain the appearance of a normal man. The wife was not willing to mend fences with her husband.

The defendant claimed that the marriage should be annulled because of his wife's fault. He assured that there was no defect on his part and that he was not impotent. He admitted that there was no sexual intercourse between the two mainly because his wife avoided him.

The trial court voided their marriage and the Court of Appeals affirmed the decision.

From the facts given, was there psychological incapacity?

Yes, the Court ruled that there was psychological incapacity. Senseless refusal to consummate the marriage is tantamount to psychological incapacity.

The appellant did not deny that he did not have any sexual relations with his wife during their cohabitation. The abnormal unwillingness to consummate marriage is a strong indicative of a serious personality disorder which the Court concluded as an "utter inability to give meaning and significance of the marriage" within the meaning of Article 36 of the Family Code.

For the husband and wife, it is an essential marital obligation under the Family Code to procreate children based on the universal principle that procreation of children through sexual relations is the basic end of marriage. The unjust refusal of a spouse to fulfil the above-mentioned marital obligation is tantamount to psychological incapacity.³⁶

Comparative Analysis of the Aforementioned Cases

As to their common ground, all five cases upheld the concept of marriage as an inviolable social institution and the foundation of the family.³⁷ The reason

³⁵ Supra, note 13.

³⁶ Supra, note 13.

³⁷ CONST. (1987), art. XV, § 2 (Phil.).

is obvious. Our Constitution and laws treat marriage as a strong pillar to bind family relations. It is also noteworthy that one of the major tenets under the 1987 Constitution is directed to the laws on family, recognizing it as our basic social institution. Marriage is protected by the State and is inviolable; thereby severing marital ties is only done through stringent legal processes. Family and marriage are intertwined and should be protected by the State.³⁸ Pursuant to this Constitutional provision, the Supreme Court interpreted that the burden of proof to show the nullity of the marriage belongs to the plaintiff. In case of doubt, it should be resolved in favor of the validity of marriage and against its nullity.

In the interest of justice, the *Kalaw* case has relaxed the stringent *Molina* guidelines. The Court found out that the said guidelines were too rigid and would not be entirely applicable to all Filipino couples invoking psychological incapacity as a ground for nullity of marriage.³⁹ Hence, courts are directed to decide cases involving psychological incapacity on a case-to-case basis. Article 36 of the Family Code should not be interpreted too literally because the drafters intended the law to enable some resiliency in its application.

The *Chi Ming Tsoi* case is a constant reminder that if a wife or a husband unjustly refuses to engage in sexual cooperation with his or her spouse, it is a ground for psychological incapacity. There is a universal principle that procreation of children through sexual relations is the basic end of marriage. Moreover, this case also tackles homosexuality, which is generally not a ground for the annulment of marriage. It can only be considered as a ground if there is concealment of this condition prior to the marriage.⁴⁰

Upon juxtaposing *Tan-Andal v. Andal with Republic v. Court of Appeals* and *Molina*, it is observed that the Supreme Court now categorically abandons the second *Molina* guideline. The Supreme Court reiterated that psychological incapacity is neither a mental incapacity nor a personality disorder that needs an expert opinion as an indispensable requirement. However, it should be borne in mind that there should be proof of the person's enduring aspects of personality, which is also termed as "personality structure", manifesting through clear acts of dysfunctionality undermining the family.⁴¹ The respondent spouse's personality structure must make it impossible for him or her to understand and, more importantly, to comply with his or her essential marital obligations.

An expert opinion on the aspect of the person's personality is unnecessary to prove psychological incapacity. The testimony and opinion of ordinary witnesses, who have been present in the life of the spouses and have observed their behaviors prior the marriage, can be given credence in court. Hence, the knowledge of these behaviors can help the judge discern as to whether one of the spouses is seriously incapacitated to assume his or her essential marital obligations.⁴²

³⁸ Ibid.

³⁹ Supra, note 14.

⁴⁰ Supra, note 13.

⁴¹ Supra, note 18.

⁴² Ibid.

Contemplating on the rulings of *Santos v. Court of Appeals* and *Republic v. Court of Appeals* and *Molina*, the Court is now certain that psychological incapacity under Article 36 of the Family Code is incurable, not medically, but in the legal sense. To be more specific, the incapacity should be so persistent to a specific partner along with the couple's incompatible personality structures. Thus, there is no other remedy but to sever the ties of marriage. There should be a pattern of incongruity of the spouses undermining their obligations of mutual love, respect, and support.⁴³

The requirement of gravity, under psychological incapacity, is retained. However, mild characterological peculiarities, emotional outbursts and changes in the mood are excluded. In other words, it must be clearly observed that the incapacity is based on a genuinely serious psychic cause.

Juridical antecedence is still a stringent requirement under Article 36. In other words, the incapacity should exist at the time of the celebration of the marriage, albeit the incapacity shows only after the solemnization of marriage. This is the distinguishing factor of psychological incapacity from divorce. In divorce, the marriage is only severed for reasons, psychological or otherwise, arising after the solemnization of marriage.⁴⁴

The case of *Republic v. Court of Appeals* and *Molina* provides that the essential marital obligations are "those embraced by Articles 68 up to 71 of the Family Code of the Philippines⁴⁵ relative to the husband and wife as well as Articles 220, 221[,] and 225 of the same Code relative to the parents and their children."⁴⁶ These provisions are reproduced below for reference:

ARTICLE 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

ARTICLE 69. The husband and wife shall fix the family domicile. In case of disagreement, the court shall decide.

The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family.

⁴³ *Ibid.*, (Peralta-Bernabe, J., concurring).

⁴⁴ *Ibid.*

⁴⁵ *Supra*, note 11.

⁴⁶ *Ibid.*

ARTICLE 70. The spouses are jointly responsible for the support of the family. The expenses for such support and other conjugal obligations shall be paid from the community property and, in the absence thereof, from the income or fruits of their separate properties. In case of insufficiency or absence of said income or fruits, such obligations shall be satisfied from the separate properties.

ARTICLE 71. The management of the household shall be the right and the duty of both spouses. The expenses for such management shall be paid in accordance with the provisions of Article 70.

ARTICLE 220. The parents and those exercising parental authority shall have with the respect to their unemancipated children or wards the following rights and duties:

(1) To keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for their upbringing in keeping with their means;

(2) To give them love and affection, advice and counsel, companionship and understanding;

(3) To provide them with moral and spiritual guidance, inculcate in them honesty, integrity, self-discipline, self-reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizenship;

(4) To furnish them with good and wholesome educational materials, supervise their activities, recreation and association with others, protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals;

(5) To represent them in all matters affecting their interests;

(6) To demand from them respect and obedience;

(7) To impose discipline on them as may be required under the circumstances; and

(8) To perform such other duties as are imposed by law upon parents and guardians.

ARTICLE 221. Parents and other persons exercising parental authority shall be civilly liable for the injuries and damages caused by the acts or omissions of their unemancipated children living in their company and under their parental authority subject to the appropriate defenses provided by law.

ARTICLE 225. The father and the mother shall jointly exercise legal guardianship over the property of the unemancipated common child without the necessity of a court appointment. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.

The rule that the decisions of the National Appellate Matrimonial Tribunal of the Catholic Church of the Philippines on nullity cases pending before secular courts are persuasive in nature, is retained. Without prejudice to the ponente's view on the separation of Church and State,⁴⁷ it is observed that Article 36 of the Family Code was lifted from Canon Law. To be more specific, it was derived from

- 1) Those who lack the sufficient use of reason;
- 2) Those who suffer from a grave defect of discretion of judgment concerning the essential matrimonial rights and duties mutually to be handed over and accepted;
- 3) Those who are not able to assume the essential obligations of marriage for causes of a psychic nature. (emphasis supplied)⁴⁹

Canon 1095 of the New Code of Canon Law.⁴⁸ As such, Canon 1095 of the New Code of Canon Law should be considered in interpreting Article 36 and in deciding psychological incapacity cases. Such provision is reproduced below for reference:

Canon 1095. The following are incapable of contracting marriage:

If the Catholic Church voids a canonical marriage, it will only give a persuasive effect. The primordial reason is that the Code Committee has also the intention of solving problems on marriages already annulled by the Catholic Church but still subsisting under our civil law.⁵⁰ In the case of *Leonilo Antonio v. Marie Ivonne F. Reyes*, the Supreme Court even reproached the Court of Appeals for failing to consider the prior church annulment of the parties' marriage as indicative of the void nature of the secular marriage. This Court even called the error a "deliberate ignorance."⁵¹

The above-cited discussions on canonical decisions are not binding on secular courts. The said canonical decisions are just evidence of the nullity of the secular marriage. In the end, it is still the judge who has the sole power to render a decision based on the elements of nullity of marriage under Article 36.

⁴⁷ Justice Leonen's Dissenting Opinion in *In Re. Letter of Valenciano*, Holding of Religious Rituals at the Hall of Justice Bldg. in Q.C., 806 Phi I. 786 (2017), as cited in *Tan-Andal v. Andal*, G.R. No. 196359, (May 11, 2021) (Phil.), <https://sc.judiciary.gov.ph/20821/>

⁴⁸ *Supra*, note 8.

⁴⁹ Code of Canon Law, available at https://www.vatican.va/archive/cod-juris-canonici/eng/documents/ciclib4-cann998-1165_en.html#TITLE_VII, accessed on January 3, 2022.

⁵⁰ *Supra*, note 31.

⁵¹ *Ibid*

⁵² *Supra*, note 18.

⁵³ *Ibid*.

⁵⁴ *Ibid*.

Conclusion / Epilogue: Psychological Incapacity Redefined

Perusing the rulings of the Supreme Court in *Tan-Andal v. Andal*, *Santos v. Court of Appeals*, *Republic v. Court of Appeals* and *Molina, Kalaw v. Fernandez*, and *Chi Ming Tsoi v. CA*, one can observe that the concept of psychological incapacity has evolved from being a novel concept in both Article 36 of the Family Code and in a 1995 Supreme Court case, to a legal and less restrictive concept, replete of guidelines in the present time. All Supreme Court cases have their common grounds, as well as differences in determining psychological incapacity. However, it remains that the painful uncoupling story of Rosanna and Mario Victor was indeed a novel case for the members of the legal profession. It has paved the way for a redefined manner of understanding and ruling on psychological incapacity cases.

The case of *Tan-Andal v. Andal* has caused a major turnaround. Psychological incapacity, when applied in petitions concerning declaration of nullity of marriage, ceased to be a medical concept. Currently, it is now regarded as a legal concept. As a result, the Courts will not require anymore that medical professionals, such as psychiatrists and psychologists, will appear in Court as expert witnesses. The testimonies of ordinary witnesses will already suffice. In layman's terms, the accounts of the people who witnessed the marital union and its uncoupling will already be given credence in ruling for psychological incapacity.

The Supreme Court now clearly establishes a yardstick in deciding cases involving psychological incapacity. The high court put emphasis that there should be clear acts of dysfunctionality present along with the absence of understanding with one's essential marital obligations due to psychic causes. It is then unnecessary to be medically identified. An expert opinion is not an indispensable requirement at present.⁵²

Indeed, the previous decided cases on psychological incapacity are restrictive, rigid, and intrusive on our rights to liberty, autonomy, and human dignity.⁵³ Uncoupling stories will always be bitter and painful, springing from the afterthought that the parties married the wrong person, or that the couple lived in two different and irreconcilable realities.

Twenty-seven years since the promulgation of the *Santos* ruling and thirty-four years after the Family Code of the Philippines was signed into law, the Supreme Court might have realized that it is high time to redefine psychological incapacity in light of the evolution of science, subsequent cases, and other contemporary circumstances.⁵⁴ And with that realization, the case of *Tan-Andal v. Andal* redefined how the legal profession understands the concept of psychological incapacity.

⁵² Supra, note 18.

⁵³ Ibid.

⁵⁴ Ibid.